

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROGER R. CRANE, JR.,

Plaintiff,

- vs -

POETIC PRODUCTS LIMITED,

Defendant.

POETIC PRODUCTS LIMITED,

Counterclaimant,

- vs -

ROGER R. CRANE, JR.,

Counterclaim Defendant.

Case No. 07 Civ. 7063 (BSJ) (FM)

ANSWER TO COUNTERCLAIM

**ANSWER TO DEFENDANT'S COUNTERCLAIM**

Plaintiff-Counterclaim Defendant Roger R. Crane Jr. ("Crane") by and through his attorneys, Nixon Peabody LLP, as and for its Answer to the Defendant's Counterclaim, state, upon information and belief, as follows:

1. Admits.
2. Admits.
3. Admits but avers that Defendant's "state law claims" are preempted by the Copyright Act.
4. Admits venue and otherwise denies the remaining allegations.
5. Admits.

6. Admits.
7. Admits that Crane's *The Last Confession* was advertised, marketed, promoted, published, and performed in the U.K. Crane otherwise denies the remaining allegations.
8. Admits that Defendant notified Crane of alleged infringement. Otherwise denies the remaining allegations.
9. Admits.
10. Admits that the cited articles were published. Otherwise denies the remaining allegations.
11. Admits that *The Last Confession* was authored and published in the U.S. and that Crane has marketed the same in the U.S. Otherwise denies the remaining allegations.
12. Denies.

**COUNT I**

13. Crane hereby repeats and asserts its responses to paragraphs 1 through 12 as if fully set forth herein.
14. Admits.
15. Denies.
16. Denies.
17. Denies.
18. Denies.
19. Denies.

**COUNT II**

20. Crane hereby repeats and asserts its responses to paragraphs 1 through 19 as if fully set forth herein.
21. Denies.
22. Denies.
23. Denies.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Counterclaim fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The work that Defendant claims has been infringed is not entitled to copyright protection on the ground that it is within the public domain and/or it does not constitute copyrightable subject matter.

**THIRD AFFIRMATIVE DEFENSE**

Defendant's request for relief is barred by the doctrines of fair use and scenes a faire.

**FOURTH AFFIRMATIVE DEFENSE**

Defendant's request for relief is barred by the doctrines of waiver and estoppel.

**FIFTH AFFIRMATIVE DEFENSE**

The Second Count asserted by Defendant for common law unfair competition or any other state law claims are preempted by the Copyright Act, 17 U.S.C. § 101.

**SIXTH AFFIRMATIVE DEFENSE**

Any alleged similarities between Crane's and Defendant's works are not protectible as they are in the public domain, historical fact, and/or completely lacking in originality.

**SEVENTH AFFIRMATIVE DEFENSE**

Crane's allegedly infringing work was created independently from Defendant's work.

WHEREFORE, Crane prays for judgment in its favor and against Defendant, as follows:

- (a) A declaration that Crane's *The Last Confession* does not infringe any purported rights of Defendant under U.S. and U.K. copyright law;
- (b) Reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505 and as may otherwise be allowed by law; and
- (c) Such other relief as is determined to be just and proper.

Dated: New York, New York  
November 13, 2007

NIXON PEABODY LLP

/s/ Frank Penski  
Frank H. Penski (FP-9221)  
Tamar Y. Duvdevani (TD-7603)  
437 Madison Avenue  
New York, NY 10021  
(212) 940-3000  
(212) 940-3111

## **EXHIBIT D**

# NIXON PEABODY LLP

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## FAX

**Date:** September 20, 2007 **Pages (including cover):** 3  
**To:** Tammy Carmichael, Esq. **Fax:** (212) 385-9010 **Ph:** (212) 513-3563  
**From:** Tamar Duvdevani, Esq.  
**Message:** Please see the attached.

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**Date:** September 20, 2007 **Pages (including cover):** 3  
**To:** Ms. Tammy Carmichael **Fax:** (212) 385-9010 **Ph:** (212) 513-3563  
**From:** Tamar Duvdevani  
**Client/Matter:** 023306/2 **User No.:** 1353 **Disbursement Amount:** \$

**NIXON PEABODY**<sub>LLP</sub>  
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September 20, 2007

**VIA FAX AND U.S. MAIL**

Ms. Tamara Carmichael, Esq.  
Holland & Knight  
195 Broadway 24th Floor  
New York, NY 10007

RE: *Crane v. Poetic Products Ltd.*, 07 Civ. 7063

Dear Tammy:

As you know, I represent the plaintiff in the above-captioned action, and I write in connection with yesterday's telephone conversation.

I have conferred with my client about the issues you and I discussed. As I mentioned yesterday, your client has placed a cloud over Mr. Crane's copyright, not only over anything that he does in England with his play, but over his global rights. Poetic Products Limited ("PPL") has specifically asserted claims over future productions and film rights of *The Last Confession*, which obviously relates to the U.S. as well as other countries outside of England. This fact alone has created an actual controversy subject to adjudication in the United States.

Beside this fact, you asked me if Mr. Crane has been shopping his play in the U.S. I have been authorized to inform you that prior to the commencement of this action, and continuing through to the present, Mr. Crane has been in negotiations with two production groups in Los Angeles, California over movie rights to *The Last Confession*, one Los Angeles theatre production company who is interested in producing the play, as well as three Broadway producers who have expressed an interest in producing the play. Several of these groups are ready to go forward with Mr. Crane but for the cloud that your client has placed over Mr. Crane's title. Thus, as you can see, subject matter jurisdiction exists, and it would be a waste of both of our resources for PPL to make a motion regarding the same.

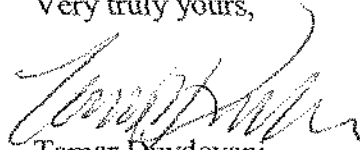
However, if you would still like additional time to answer over the three weeks we have previously granted, we are willing to give you another two-week extension. As discussed, this extension would be subject to your client waiving any service defects.

Ms. Tamara Carmichael, Esq.  
September 20, 2007  
Page 2

Because you questioned whether a controversy exists in the United States, I am assuming that your client may not interfere with anything that Mr. Crane does with his play outside of England. As such, if PPL is willing to stipulate that the scope of the copyright claim that your client has made or would ever make against Mr. Crane's *The Last Confession* is limited solely to theatrical or movie productions in England, it may be that there exists a basis upon which we could settle the case.

Please do not hesitate to contact me with any questions.

Very truly yours,



Tamar Duvdevani

TYD

cc: Frank Penski, Esq.  
Roger Crane, Esq.

## **EXHIBIT E**

**Carmichael, Tamara F (NYC - X73563)**

**From:** Duvdevani, Tamar [tduvdevani@nixonpeabody.com]  
**Sent:** Thursday, September 20, 2007 5:01 PM  
**To:** Carmichael, Tamara F (NYC - X73563)  
**Subject:** RE: The Last Confession

Hi Tami,

Yes, it is the same script.

Thanks,

Tamar

Tamar Y. Duvdevani  
Nixon Peabody LLP  
437 Madison Avenue  
☎ (212) 940-3710  
☎ (866) 851-1047  
✉ tduvdevani@nixonpeabody.com

**From:** tamara.carmichael@hklaw.com [mailto:tamara.carmichael@hklaw.com]  
**Sent:** Thursday, September 20, 2007 4:31 PM  
**To:** Duvdevani, Tamar  
**Subject:** The Last Confession

Hi Tamar,  
Thank you for your letter today.  
I have one question for clarification. When you refer to Mr. Crane meeting with persons in the U.S. regarding The Last Confession, is the screenplay/play referred to in your letter in the same or substantially the same form as the script published by Oberon Books Limited and as performed during recent months in the UK?

Please advise.  
Thank you,  
Tami

Tamara Carmichael, Esq.  
Holland & Knight, LLP  
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**Holland + Knight**

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